IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1319 of 2007.
Decided on: 14 -12-2007.

Sukhbir Singh

....Petitioner.

Versus

Surinder Singh and others.

....

Respondents.

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: **Mr. M.S.Talwar Advocate for**
Mr. K.D. Sachdeva Advocate
for the petitioner.

Mr.Sarjit Singh, Senior Advocate
with Ms.Deepinder Kaur Advocate,
for respondent No.1.

RAJESH BINDAL J.

The defendant has filed the present revision petition against the order passed by the learned Additional District Judge, Patiala, whereby in an appeal against the order passed by Civil Judge (Jr.Division), Patiala under Order 39, Rule 1 & 2 CPC, the petitioner/defendant has been restrained from alienating the suit land and also from creating any charge over it till the decision of the suit.

The dispute arise out of a suit for permanent injunction filed by respondent No.1/plaintiff against the

petitioner/defendant restraining him from alienating the suit land in any manner whatsoever and also restraining him from creating any sort of charge or to get loan from any bank on the suit land.

The case set up by the plaintiff was that the land in dispute was owned by Dharamshala Bai Veer Singh of Village Ojhan, and Charan Singh, father of plaintiff, was tenant on the land since 1956. Charan Singh applied for acquiring the proprietary rights of the said land under Pepsu Tenancy and Agriculture Act,1955 on November 16, 1963 which application remain pending. Charan Singh died on December 23, 1986 and after his death, the rights vested with the plaintiff and his brothers. The defendants had taken the land for cultivation from the plaintiff. On an application filed by the defendants, the Assistant Collector Ist Grade vide order dated January 17,1990 without notice to the plaintiff, passed an order granting proprietary rights in their favour. When the plaintiff came to know about this order, he immediately filed an appeal against the order before the Collector who vide order dated July 20, 2005 remanded the case back to Asstt. Collector Ist Grade to decide the same afresh after hearing both the parties. Accordingly, the claim set up by the plaintiff was that the petitioner/defendant was not having any right whatsoever in the property and the order dated 17.01.1990 having been set aside

in appeal, the rights flowing there from to the petitioner/defendant had also vanished.

On the other hand, the claim set up by the petitioner/defendant was that there is an order passed by the competent authority in his favour and consequently, even the revenue entry has already been recorded in his favour and unless those are set aside, prima facie the petitioner is owner of the property and the interim injunction prayed for by respondent No.1/plaintiff should not be granted.

Learned trial Court dismissed the application filed by respondent No.1/plaintiff for interim injunction. However, learned First Appellate Court while setting aside the order passed by the learned trial Court restrained the petitioner/defendant from alienating the suit land and also encumbering the same in any manner whatsoever. It is against this order that the petitioner/defendant is before this Court in the present revision petition.

I have heard learned counsel for the parties and with their assistance, have perused the paper book.

Learned counsel for the petitioner submitted that once there was an order of allotment of land passed by the revenue authorities in favour of the petitioner and also the entries in the revenue record are existing, prima facie the petitioner has a case on merits and respondent No.1/plaintiff who has filed the

suit is yet to prove his claim and during the pendency of the suit, no interim injunction deserves to be granted. He further submitted that though he does not propose to alienate the land, however to carry out the agricultural operation on the land, loans are required to be raised and in case he is debarred from that also, he will suffer irreparable loss.

On the other hand, learned Senior counsel for respondent No.1/plaintiff submitted that once the order dated 17.01.1990 which was passed by the Assistant Collector Ist Grade granting proprietary rights to the petitioner had been set aside in appeal, the petitioner does not have any legs to stand as the entries in the revenue records for the allotment of the land in favour of the petitioner and also the changes in the revenue record were merely consequence thereof. In fact it was the plaintiff who was entitled to grant of proprietary right of the land in dispute being tenant thereon and not the petitioner who was sub-tenant under him. He further submitted that in case the petitioner is not restrained from alienating the suit land or encumbering the same in any manner whatsoever, respondent No.1/plaintiff will suffer irreparable loss as in case ultimately he succeed in the suit, the same will create unnecessary problems.

Having heard learned counsel for the parties, I find merit in the submissions made by the learned counsel for

respondent No.1. Once prima facie the basic document on the basis of which the petitioner had acquired the right in the property i.e. the order dated January 17, 1990 passed by the Assistant Collector Ist Grade has already been set aside in appeal and there is no final determination as on today as regards the right to the property between the parties, the entire proceedings thereafter which had taken place on the basis of the order dated 17.01.1990, will prima facie have no effect whatsoever. In case during the pendency of the suit, the petitioner mortgages the land in question for raising the loan, the same will certainly prejudice respondent No.1/plaintiff in case ultimately the suit is decreed in his favour.

While concurring with the views expressed by learned Additional District Judge, I do not find any merit in the present petition and accordingly, dismiss the same. However, It is made clear that nothing said in this order shall prejudice the Courts below in recording the final findings in the suit, which shall be entirely based on the evidence brought on record by the parties.

December 14, 2007. Rajesh Bindal
Seema s Judge.